



1 informed by the office of the County Counsel for Del Norte County that the County Counsel had  
2 received authorization to represent defendant Wilson in this matter on August 14, 2012. County  
3 Counsel's office, therefore, requested that it be granted an extension of time to file an answer by  
4 undersigned counsel. Plaintiffs have agreed to stipulate to an extension of time.

5       1.       **Jurisdiction and Service:** The Court has jurisdiction over Plaintiffs' claims based  
6 upon 28 U.S.C. § 1331, in that the Plaintiffs' claims arise under the Constitution and laws of the  
7 United States; and (b) 28 U.S.C. § 1362, in that this civil action is brought by a federally  
8 recognized Indian tribe whose claims arise under the Constitution and the laws of the United States.  
9 There are no issues with regard to venue and, no defendants remain to be served, pending the filing  
10 of a second amended complaint.

11       2.       **Facts:** Plaintiffs Gary Dowd and Frank Dowd ("Individual Plaintiffs"), members  
12 of the plaintiff Resighini Rancheria ("Tribe"), were cited for California Fish and Game Code  
13 violations, specifically, fishing on the Klamath River without a Yurok Tribal ID. Plaintiffs allege  
14 both citations were issued by law enforcement officers deputized by the Sheriff to exercise state  
15 peace officer powers and to enforce California law. In each instance, the Individual Plaintiffs were  
16 fishing within the boundaries of the old Klamath River Reservation/Extension. The Del Norte  
17 County District Attorney later dismissed all charges against both Individual Plaintiffs. Plaintiffs  
18 maintain that the Individual Plaintiffs were fishing pursuant to the federally reserved fishing rights  
19 of the Resighini Rancheria, and the arrests constitute an interference with those rights. Plaintiffs  
20 contend that the law enforcement officers carrying out the arrests were exercising peace officer  
21 powers pursuant to deputation by defendant Wilson. Plaintiffs bring this action to prevent Wilson  
22 and anyone acting pursuant to his authority from arresting Resighini Tribal members for exercising  
23 their federally reserved fishing rights.

24       3.       **Legal Issues:** The main legal issues in this case are as follows. (1) Whether the  
25 Sheriff and the Department of Fish and Game have jurisdiction to enforce the civil regulatory  
26 provisions of the State's Fish and Game Code against the members of the Tribe in the Indian  
27 Country of the old Klamath River Indian Reservation/Extension pursuant to 28 U.S.C. § 1360, and  
28 18 U.S.C. § 1162 ("P.L. 280"). (2) Whether the Sheriff and the Department have civil regulatory

1 authority over the Tribe's regulation of fishing by its members within the Indian Country of the old  
 2 Klamath River Indian Reservation/Extension under P.L. 280. (3) Whether the Sheriff and the  
 3 Department have deprived the Individual Plaintiffs and the members of the Tribe of their federally  
 4 reserved right to fish in the Klamath River at the Tribe's usual and customary fishing places within  
 5 the old Klamath River Reservation/ Extension, free of State regulation and control, in violation of  
 6 42 U.S.C. § 1983 and the 14<sup>th</sup> Amendment to the United States Constitution.

7 4. **Motions:** No motions are pending. Plaintiffs intend to file a motion for summary  
 8 judgment within 2 weeks of the filing of the Second Amended Complaint.

9 5. **Amendment of Pleadings:** Plaintiffs intend to file a second amended complaint to  
 10 add officials of the California Department of Fish & Game as defendants and to add allegations  
 11 about the relationship between the actions of defendant and the actions of California Department  
 12 of Fish & Game officials.

13 6. **Evidence Preservation:** Neither party has any concerns about evidence  
 14 preservation, as the issues in this case are legal issues based on facts that are not in dispute.

15 7. **Disclosures:** No Rule 26 disclosures have been made in response to the Amended  
 16 Complaint. The parties have not had an opportunity to make those disclosures, because the  
 17 Amended Complaint was served on defendant Wilson on July 27, 2012, his legal counsel did not  
 18 receive authorization to represent him until August 14, 2012, and, therefore, his legal counsel has  
 19 not yet had a chance to address the Rule 26 disclosures with plaintiffs' counsel.

20 8. **Discovery:** No discovery has been carried out in this case. The parties have not yet  
 21 had an opportunity to discuss a discovery plan pursuant to Rule 26(f).

22 9. **Class Action:** This is not a class action.

23 10. **Related Cases:** There are no related cases.

24 11. **Relief:** Plaintiff seeks the following relief. (1) A declaration that defendant Wilson  
 25 and the peace officers deputized by the Del Norte County Sheriff's Department ("Department") and  
 26 exercising the State of California peace officer powers delegated to them by defendant Wilson have  
 27 no jurisdiction to enforce the provisions of the California Fish and Game Code against members  
 28 of the Tribe within the boundaries of the old Klamath River Reservation/Extension. (2) A

1 declaration that, under P.L. 280, defendant Wilson and officers deputized by the Department,  
 2 exercising the State of California peace officer powers delegated to them by defendant Wilson, lack  
 3 civil regulatory authority over the Tribe's regulation of fishing by its members on the Klamath  
 4 River within the old Klamath River Reservation/Extension. (3) A declaration that defendant  
 5 Wilson and the Department, under color of State law (the provisions of the California Fish and  
 6 Game Code) have deprived plaintiffs Frank Dowd and Gary Dowd and the members of the Tribe  
 7 of the right to fish in the Klamath River within the old Klamath River Reservation/Extension free  
 8 of state regulation and control, a right guaranteed to them by federal law, in violation of 42 U.S.C.  
 9 § 1983. (4) An order preliminarily and permanently enjoining defendant Wilson, his agents and  
 10 employees, and law enforcement officers exercising State of California peace officer powers  
 11 delegated to them by defendant Wilson from citing members of the Tribe for fishing on the  
 12 Klamath River within the old Klamath River Reservation/Extension not in accordance with State  
 13 law. (5) Award the plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. §  
 14 1988.

15 12. **Settlement and ADR:** The parties have not had an opportunity to discuss the  
 16 prospects for Settlement and ADR.

17 13. **Consent to Magistrate Judge for All Purposes:** This matter has already been  
 18 assigned to Judge Chen.

19 14. **Other References:** The parties have not had an opportunity to discuss the suitability  
 20 of the case for reference to binding arbitration, a special master, or the Judicial Panel on  
 21 Multidistrict Litigation.

22 15. **Narrowing of Issues:** The parties have not had an opportunity to discuss the  
 23 likelihood of narrowing the issues in this case, but the plaintiffs contend that the issues in this case  
 24 are limited, legal issues, and that the facts are undisputed.

25 16. **Expedited Trial Procedure:** Plaintiffs contend that, because, the issues in this case  
 26 are limited, legal issues, summary proceedings will be appropriate in this case.

27 17. **Scheduling:** The parties have not had an opportunity to discuss scheduling.

28 18. **Trial:** The parties have not had an opportunity to discuss the issues relating to trial,

1 but plaintiffs expect the case to be determined based on a motion or cross motions for summary  
2 judgment.

3 19. **Disclosure of Non-party Interested Entities or Persons:** The parties have not had  
4 an opportunity to submit disclosures of non-party interested entities or persons.

5 20. **Other Matters:** The parties request that the Status Conference in this matter,  
6 presently scheduled for September 14, 2012, to be rescheduled to 30 days after defendant Wilson  
7 and any other named defendants have had an opportunity to file an answer or other responsive  
8 pleading to the plaintiffs' Second Amended Complaint.

9 Dated: September 11, 2012

Respectfully Submitted,

10 RAPPORT AND MARSTON

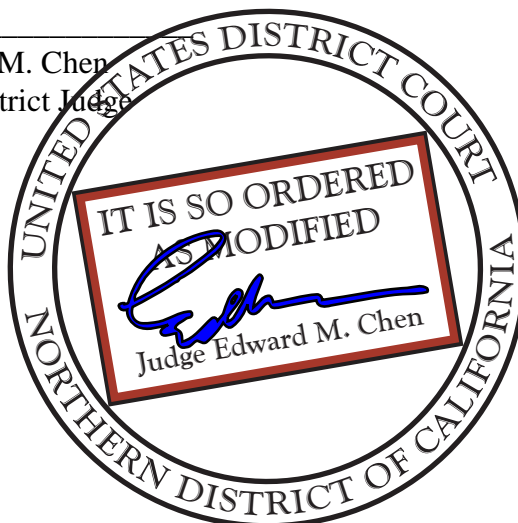
11  
12 By: s/ Lester J. Marston  
13 LESTER J. MARSTON  
14 Attorneys for Plaintiffs

15 DEL NORTE COUNTY COUNSEL

16  
17 By: s/ Gretchen Stuhr  
18 GRETCHEN STUHR  
19 Attorney for Defendant

20 IT IS SO ORDERED the the case management conference is reset from 9/14/12  
21 to 11/2/12 at 9:00 a.m. A joint CMC Statement shall be filed by 10/26/12.

22 Edward M. Chen  
23 U.S. District Judge



**CERTIFICATE OF SERVICE**

I, LESTER J. MARSTON, hereby certify that a copy of the foregoing document was this date served upon all counsel of record by electronically filing the foregoing with the Clerk of the U.S. District for the Northern District of California, using its ECF system, which automatically provides electronic notification to the following:

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\_\_\_\_\_  
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